

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment clarifies when a medical assistance provider will not or cannot provide records to support services billed to the medical assistance program. In the course of administrative law hearings, the administrative law judges have determined that “may” indicates that the Department cannot recover medical assistance payments when a provider will not or cannot provide records to support services billed to the medical assistance program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0570C** on January 23, 2013.

The Department received one comment from an interested party.

The respondent objected to this amendment as it is seen as ill-defined, overly broad, lacking in due process, and resulting in an unjust remedy. The respondent does not debate the importance of maintaining records as directed by the rule or the importance of producing records in support of a claim for services. This rule, however, addresses any request for production of records and proposes as a remedy complete denial of payment for medical services legitimately provided, payment that can range considerably in amounts.

The respondent stated that production of records raises innumerable issues for providers of services bound by many laws and regulations. Each request must be reviewed and answered consistent with the request and laws and regulations applicable to that request. Legitimate production disputes do arise. Too, sometimes requests for production are unreasonable in time and scope; while a provider might release what the provider believes is either responsive and/or consistent with law, the Department may disagree. The Medicaid program cannot avoid its obligations to pay for health care services provided because of a legitimate dispute regarding record production.

The respondent also stated that the proposed mandate does not define “timely” and, as such, gives the Department full authority to arbitrarily set time frames for production, resulting in a denial of payment or automatic reduction of payments through recoupment processes if the arbitrary and potentially unreasonable time frames are not met. The proposed mandate provides no notice or opportunity to be heard regarding the dispute and the Department’s denial or recoupment due to a lack of record production. The proposed mandate provides no standard; rather any lack of production—whether reasonable or unreasonable, whether clear or unclear, whether delivered to the correct address or wrong address, whether sent but not received, whether consistent with law or not—results under this proposed mandate in a denial of payment for services provided regardless of the nature of the services or the payment amount.

The respondent believes that the Department now has authority to deny a claim, not solely due to lack of record production, but due to inadequate documentation supporting the legitimacy of the claim. The proposed amendment anticipates an automatic administrative process that may be ill-supported and unjust.

The Department’s response is that this amendment effects a one-word change that makes clear the Iowa Medicaid Enterprise (IME) is required under the rules to collect overpayments when there are no records to support the services. There are no other changes to the rule (e.g., “timely” has always been a requirement in rule). The remainder of the records review processes in Chapter 79 still apply (e.g., 30 days to respond to the request, an additional 15-day period on request, etc.). An exception to policy for the records submission time frame can be requested for hard cases.

Under federal law, the IME is required to collect identified overpayments. The IME could be subject to False Claims Act liability to the federal government and others if overpayments were not collected by the IME. This amendment is intended to clarify current practice and is not intended to effect any

change in current practice. No changes have been made to this amendment as the result of the comments provided.

This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 10, 2013.

This amendment does not provide for waivers in specified situations because all Medicaid providers are subject to the same requirements to keep records to support services billed to Medicaid and provide the records when requested. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective July 1, 2013.

The following amendment is adopted.

Amend rule 441—79.3(249A), introductory paragraph, as follows:

441—79.3(249A) Maintenance of records by providers of service. A provider of a service that is charged to the medical assistance program shall maintain complete and legible records as required in this rule. Failure to maintain records or failure to make records available to the department or to its authorized representative timely upon request ~~may~~ shall result in claim denial or recoupment.

[Filed 4/10/13, effective 7/1/13]

[Published 5/1/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/13.